



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 2B
THE EUROPEAN INSOLVENCY REGULATION

This is the **summative (formal) assessment** for **Module 2B** of this course and is compulsory for all candidates who **selected this module as one of their compulsory modules from Module 2**. Please read instruction 6.1 on the next page very carefully.

If you selected this module as **one of your elective modules**, please read instruction 6.2 on the next page very carefully.

The mark awarded for this assessment will determine your final mark for Module 2B. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.
2. All assessments must be submitted electronically in MS Word format, using a standard A4 size page and a 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).
4. You must save this document using the following format: **[studentID.assessment2B]**. An example would be something along the following lines: 2021122-526.assessment2B. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the word “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
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- 6.1 If you selected Module 2B as one of your **compulsory modules** (see the e-mail that was sent to you when your place on the course was confirmed), the final time and date for the submission of this assessment is **23:00 (11 pm) GMT on 1 March 2022**. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2022. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
- 6.2 If you selected Module 2B as one of your **elective modules** (see the e-mail that was sent to you when your place on the course was confirmed), you have a **choice** as to when you may submit this assessment. You may either submit the assessment by **23:00 (11 pm) GMT on 1 March 2022** or by **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. If you elect to submit by 1 March 2022, you **may not** submit the assessment again by 31 July 2022 (for example, in order to achieve a higher mark).
7. Prior to being populated with your answers, this assessment consists of **9 pages**.

ANSWER ALL THE QUESTIONS

QUESTION 1 (multiple-choice questions) [10 marks in total]

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

The EIR 2000 substantively harmonised the national insolvency law of the Member States.

- (a) False. The objective of an EU regulation is not legal harmonisation.
- (b) True. Since the entry into force of the EIR 2000, the insolvency laws of the Member States are similar.
- (c) False. The objective of the EIR 2000 was not to harmonise aspects of national insolvency laws but to provide non-binding guidelines only.
- (d) False. While the EIR 2000 attempted to harmonise national insolvency laws, its focus was on procedural aspects of insolvency law, not substantive ones.**

Question 1.2

The EIR 2000 was the first ever European initiative to attempt to harmonise the insolvency laws of Member States.

- (a) False. The EU sought to draft Conventions with a view to harmonising the insolvency laws of EU Member States as early as the 1960s, but these initiatives failed.**
- (b) False. There was another EU Regulation regulating insolvency law at EU level before the EIR 2000.
- (c) True. Before the EIR 2000, the EU has not sought to harmonise the insolvency laws of EU Member States.
- (d) False. An EU Directive regulating insolvency law at EU level existed before the EIR 2000.

Question 1.3

The EIR Recast was urgently needed because the EIR 2000 was considered dysfunctional and ineffective.

- (a) True. The EIR 2000 proved to be inefficient and incapable of supporting the effective resolution of cross-border cases over the years.
- (b) True. As a result, the EIR 2000 lacked the support of major stakeholders such as insolvency practitioners, businesses and public authorities who considered the instrument fruitless.

(c) False. While a number of shortcomings were identified by an evaluation study and a public consultation, the EIR 2000 was generally regarded as a successful instrument by most stakeholders, including practitioners, businesses, the EU institutions and insolvency academics.

(d) False. The EIR 2000 was considered a complete success to support cross-border insolvency cases and, as a result, the wording of the EIR Recast mirrored its 2000 predecessor.

Question 1.4

Why can it be said that the EIR Recast did not overhaul the *status quo*?

(a) The EIR Recast is a copy of the EIR 2000. Its structure and the wording of all articles are similar.

(b) Although the EIR Recast includes relevant and useful innovations, it has stuck with the framework of the EIR 2000 and mostly codified the jurisprudence of the CJEU.

(c) The EIR Recast has not added any new concept to the text of the EIR 2000.

(d) It is incorrect to say that the EIR Recast has not overhauled the *status quo* at all. On the contrary, the EIR Recast has departed from the text of its predecessor and is a completely new instrument which has rejected all existing concepts and rules.

Question 1.5

Why can it be said that the EIR Recast is more rescue-oriented than the EIR 2000?

(a) The EIR Recast is more rescue-oriented because all domestic rescue procedures fall within its scope.

(b) The EIR Recast is more rescue-oriented because it harmonises all substantive aspects of national insolvency laws.

(c) It is incorrect to say that the EIR Recast is more rescue-oriented than the EIR 2000, as the latter was already heavily rescue-focused.

(d) The EIR Recast is more rescue-oriented because its scope was extended to cover pre-insolvency proceedings and secondary proceedings can now also be rescue proceedings.

Question 1.6

During the reform process of the EIR 2000, what main elements were identified as needing to be revised within the framework of the Regulation (whether adopted or not)?

(a) The scope of the Regulation was to be expanded to cover pre-insolvency and hybrid proceedings; the concept of COMI was to be refined; secondary proceedings were to be extended to rescue proceedings; rules on publicity of insolvency proceedings and lodging of claims were to be amended; provisions for group proceedings were to be added.

(b) Rules on co-operation and communication between courts were to be refined; the concept of COMI was to be abandoned and a new jurisdictional concept was to be found; the Recast Regulation was to apply to Denmark.

- (c) The Recast Regulation was to apply to private individuals and self-employed; a common European-wide insolvency proceeding was to be added to the Regulation.
- (d) The Regulation was meant to fully embrace the universalism principle by abandoning the concept of secondary proceedings; the Regulation was meant to mostly promote out-of-court settlement and abandon all intervention of a judicial or administrative authority in cross-border proceedings.

Question 1.7

The EIR Recast introduced the concept of “synthetic proceedings”. What are they?

- (a) “Synthetic proceedings” means that for the case at hand, several main proceedings can be opened, in addition to several secondary proceedings.
- (b) “Synthetic proceedings” means that when secondary proceedings are opened, these are automatically rescue proceedings, as opposed to liquidation proceedings.
- (c) “Synthetic proceedings” means that insolvency practitioners in all secondary proceedings should treat the proceedings they are dealing with as main proceedings for the purpose of protecting the interests of local creditors.
- (d) “Synthetic proceedings” means that when an insolvency practitioner in the main insolvency proceedings has given an undertaking in accordance with Article 36, the court asked to open secondary proceedings should not, at the request of the insolvency practitioner, open them if they are satisfied that the undertaking adequately protects the general interests of local creditors.

Question 1.8

In which of the following scenarios may the recognition of a foreign insolvency proceeding be denied under the EIR Recast?

- (a) The rule applied by the court, which has opened insolvency proceedings (originating court), is unknown or does not have an analogue in the law of the jurisdiction, in which recognition is sought.
- (b) The judgment, subject to recognition, was passed with incorrect application of the applicable substantive law.
- (c) Where the decision to open the insolvency proceedings was taken in flagrant breach of the right to be heard, which a person concerned by such proceedings enjoys.
- (d) The court, which has opened insolvency proceedings (originating court), most certainly did not have international insolvency jurisdiction to do so under the EIR Recast.

Question 1.9

In a cross-border dispute, the main proceedings before the Italian court opposes Fema SrL (registered in Italy) and Lacroix SARL (registered in France). The case concerns an action to set aside four contested payments that amount to EUR 850,000. These payments were made pursuant to a sales agreement dated 5 August 2020, governed by German law. The contested payments have been made by Fema SrL to Lacroix SARL before the former went insolvent. The insolvency practitioner of the company claims that under applicable Italian law, the

contested payments shall be set aside because Lacroix SARL must have been aware that Fema Srl was facing insolvency at the time the payments were made.

Considering the facts of the case and relevant provisions of the EIR Recast, which one of the following statements is the **most accurate**?

- (a) The insolvency practitioner will always succeed in his claim if he can clearly prove that under the *lex concursus*, the contested payments can be avoided (Article 7(2)(m) EIR Recast).
- (b) The contested transactions cannot be avoided if Lacroix SARL can prove that the *lex causae* (including its general provisions and insolvency rules) does not allow any means of challenging the contested transactions, and provided that the parties did not choose that law for abusive or fraudulent ends.
- (c) To defend the contested payments Lacroix SARL can rely solely, in a purely abstract manner, on the unchallengeable character of the payments at issue on the basis of a provision of the *lex causae*.
- (d) The contested payments shall not be avoided if Lacroix SARL proves that such transactions cannot be challenged on the basis of the insolvency provisions of German law (Article 16 EIR Recast).

B was the correct answer.

Question 1.10

The French Social Security authority asserts to have a social security contribution claim against an Irish company, Cupcake Cottage Ltd. Cupcake Cottage is subject to the main insolvency proceeding (Examinership) in Ireland. In addition, a secondary insolvency proceeding (*Concurso*) relating to the same company has been opened in Spain.

Assume that:

- Under French law, creditors (except employees) must file proof of their claim within two (2) months from the publication in the French legal gazette of a notice of the judgment opening the insolvency proceedings.
- Under Spanish law, the period within which creditors must file their claims is one month, as set in the order opening secondary insolvency proceedings against Cupcake Cottage.

The French tax authority intends to file its claim in the Spanish proceedings. Within which time period can the French tax authority do so?

- (a) Within two (2) months following the publication date, as guaranteed by the French law (law applicable to the creditor).
- (b) Within one month, as stipulated in the applicable *lex concursus secundarii* (law of the insolvency proceeding at issue).
- (c) Within 30 days following the publication of the opening of insolvency proceedings in the insolvency register of Spain.
- (d) Within the time limit prescribed by the *lex concursus* of the main insolvency proceeding (Irish law).

C was the correct answer.

Total marks: 8 out of 10.

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 2 marks] 2

The following **two (2) statements** relate to particular provisions / concepts to be found in the EIR Recast. Indicate the name of the provision / concept (as well as the relevant EIR Recast article), addressed in each statement.

Statement 1. “This article introduces a legal regime for the avoidance of secondary insolvency proceedings, based on the unilateral promise given by the main insolvency practitioner to local creditors that they will receive treatment ‘as if’ secondary proceedings had in fact been open.’

Statement 2. “The proper functioning of the internal market requires that cross-border insolvency proceedings should operate effectively. This requires judicial cooperation.”

Statement 1 – Article 36 of the EIR Recast – right to give an undertaking in order to avoid secondary insolvency.

Statement 2 – Article 49 of the EIR Recast – assets remaining after claims in the secondary proceedings should be transferred to the main proceeding.

Question 2.2 [maximum 3 marks] 3

The EIR Recast is built upon the concept of modified universalism, as pure universalism has been deemed idealistic and impractical for the time being. Provide **three (3) examples** of provisions from the EIR Recast, which highlight this modified universalism approach.

1. Provisions in the EIR Recast defined a debtor’s centre of main interests, article 3(1) of the EIR Recast, the debtor’s centre of main interests (“COMI”) is “the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties.”.
2. Provisions in the EIR Recast allows for secondary insolvency proceedings to be opened in the other member states where the debtor has an establishment, as defined in Article 2(10) of the EIR Recast.
3. The EIR Recast added a new chapter dedicated to the cross-border insolvencies of groups of related company – Chapter V. Recital 53 provides for the option for insolvency proceedings for companies in the same group to be opened in a one jurisdiction, where the court determines that the COMI of the companies is located in one EU Member State. Per Recital 51 efficient administration of insolvency proceedings is achieved.

Question 2.3 [maximum 3 marks] 3

Cross-border co-operation and communication between courts is now an obligation under the EIR Recast. This was not the case under the EIR 2000. List **three (3) provisions** (recitals and / or articles) of the EIR Recast that deal with this newly introduced obligation.

Article 42 of the EIR Recast, provides for the obligation for cooperation and communication between courts to facilitate main and secondary proceedings relating to the same debtor.

Recital 48 of the EIR Recast provides that in cooperation the courts and practitioners should take into account best practices for cooperation in cross-border insolvency cases as set out in principles and guidelines on communication and cooperation adopted by European and international organisations.

Article 57 of the EIR Recast provides for the obligation for cooperation and communication between courts in insolvency proceedings relating to two or more companies in a group.

Question 2.4 [maximum 2 marks] 2

It is widely accepted that the opening of secondary proceedings can hamper the efficient administration of the debtor's estate. For this reason, the EIR Recast has introduced a number of legal instruments to avoid or otherwise control the opening, conduct and closure of secondary proceedings. Provide **two (2) examples** of such instruments and briefly (in 1 to 3 sentences) explain how they operate.

Right to give an undertaking or "Synthetic" secondary proceedings is a legal instrument under Article 36 of the EIR Recast that was introduced to help avoid secondary proceedings being opened. Under this Article the liquidator can provide an undertaking/assurances that protects the interests of the local creditors i.e. the local creditors would receive the benefits of secondary proceedings without 'real' secondary proceedings being opened – such proceedings being termed as 'synthetic' secondary proceedings.

Recital 45 of the EIR Recast also provides for a temporary stay on the opening of secondary proceedings. The stay is not automatic, under Article 38 (1) of the EIR Recast it is only granted at the request of the insolvency practitioner or debtor in possession. The purpose of the temporary stay is to allow for negotiations between the company and its creditors. The stay may only be imposed for a period not exceeding 3 months.

Total marks: 10 out of 10.

QUESTION 3 (essay-type questions) [15 marks in total]

In addition to the correctness, completeness (including references to case law, if applicable) and originality of your answers to the questions below, marks may be awarded or deducted on the basis of your presentation, expression and writing skills.

Question 3.1 [maximum 5 marks] 5

In 2012, the European Commission recommended that the European Insolvency Regulation be amended by focusing on specific aspects of the instrument. Explain what these aspects were and how they have been introduced in the EIR Recast.

The recommendations made by the European Commission on the EIR 2000, were mainly in relation to broadening the scope of the Regulation, jurisdictional aspects of the Regulation i.e., COMI, enhanced rules for cooperation, rules on proceedings relating to members in the same group of companies and publicity rules.

The scope of the Regulation was expanded to include pre-insolvency and pre-emptive proceedings in the scope of the EIR Recast.

Previously a debtor's center of main interest ("COMI") was not defined in the Regulation, this changed in the EIR Recast and a definition of COMI was included in article 3(1) of the EIR Recast. The intention of introduction of the same was to safeguard against abusive forms of 'forum shopping'.

The Regulation previously only included rules on cooperation between the insolvency practitioners in main proceedings and the insolvency practitioners in the secondary proceedings. The EIR Recast expanded these rules to include rules on cooperation and communication between courts in insolvency proceedings under Article 42 of the Recast and also between the courts and insolvency practitioners under Article 43 of the EIR Recast.

The EIR Recast also introduced rule of coordination of insolvency proceedings of member of a group of companies under Chapter V of the EIR Recast being 'group coordination proceedings'.

In the previous Regulation, it was at the liquidator's discretion to publish information on the opening of insolvency proceedings. EIR Recast introduced rules on publicity under Article 28, the insolvency practitioner must request notice of the judgment opening the insolvency proceedings where the debtor has an establishment and any other Member State that the insolvency practitioner deems necessary in accordance with publication procedures in that Member State.

Question 3.2 [maximum 5 marks] 5

While the EIR 2000 was considered to work well overall, several innovative concepts and rules were introduced in the EIR Recast to improve the manner in which the Regulation supports the administration of a cross-border case in an efficient manner. Describe **three (3)** improvements / innovations that made their way into the EIR Recast.

The EIR Recast introduced a definition of a debtor's COMI into the regulation, Article 3 (1) also provides that "*In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary. That presumption shall only apply if the registered office has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.*"

The introduction of the 3-month period into the regulations safeguards against abusive forms of 'forum shopping'. Introduction of the same provides for efficiency in cross-border proceedings as there is no question as to the debtor's COMI and determination of the Member State which has jurisdiction. Such an approach was adopted by the CJEU in the case of *Susanne Staubitz-Schreiber*.

Article 36 of the EIR Recast included provisions relating to the 'right to give an undertaking to avoid secondary insolvency proceedings'. Such a role first originated from judicial innovation, in the case of *Collins & Aikman Europe SA*. To avoid secondary proceedings, the liquidators are able to provide an undertaking to creditors in the Member State of the establishment that allows for those to receive the benefits granted in secondary proceedings without actually opening secondary proceedings. The concept is termed as 'synthetic' or 'virtual' proceedings and is a commercial, more cost-effective approach that benefits the insolvency proceedings.

Under Article 24 of the EIR Recast, Member States “*shall establish and maintain in their territory one or several registers in which information concerning insolvency proceedings is published (“insolvency registers”).*”. Such registers were not previously required under the regulations, each Member State had its own method of insolvency registration which did not provide for efficient exchange of information between the parties in insolvency proceedings (insolvency practitioners, courts and creditors). Maintenance of insolvency registers allows for knowledge sharing, courts and insolvency practitioners will be able to determine if the debtor is subject to insolvency proceedings in other Member States. Article 24 (2) provides the mandatory information that was to be made publicly available on the insolvency register.

Question 3.3 [maximum 5 marks] 2.5

While the EIR Recast was welcomed by most stakeholders, it was also criticised by some as a “missed opportunity” and “modest”. List **two (2) flaws** or shortcomings of the EIR Recast and explain how you consider they could be corrected.

The EIR Recast including provisions relating to the coordination of group proceedings, such provisions have the potential to achieve the efficient administration of group insolvency proceedings. However, under Article 64 of the EIR Recast an insolvency practitioner appointed over a member of the group has the ability to object to being included in such group proceedings, with the liquidator only need to obtain approval required under the law of his Member State.

If not all members of a group are committed to the group proceedings, the proceedings can become quite complex (or more complex as it is an additional proceedings), time consuming and costly.

The provisions of group proceedings only cover those members that are located in Member States, so where other members of the group are located outside of the EU, the effects are the same as in the instance that all members choose to opt out.

Including in the rules specific situations that an insolvency practitioner would need to provide in order to opt out of the group proceedings could address part of the flaws with this provision.

The EIR Recast does not address the issue with respect to assets located in a third non-EU Member State. **How do you suggest this is corrected? The EU does not have the competence to design rules for non-EU Member States.**

Total marks: 12.5 out of 15.

QUESTION 4 (fact-based application-type question) [15 marks in total]

Cardinal Home is an Ireland-registered furniture company. The company opened its first store in Cork, Ireland in 2009 and has warehouses across Europe, including in Milan, Italy. In 2010, Cardinal Home entered into a credit agreement with an Italian bank since it was planning to expand its reach to the Spanish luxury furniture market, expected to grow by over 8% annually. It opened a bank account with the bank and started negotiating with local distributors, thus signing some (non-binding) memoranda of understanding with them.

Cardinal Home grew and performed well for several years. However, the impact of the economic and financial crisis of the late 2000s eventually hit the company who suffered financial difficulties from 2016. On 22 June 2017, it filed a petition to open examinership proceedings in the High Court in Dublin, Ireland.

Question 4.1 [maximum 5 marks] 4

Assume that the EIR 2000 applies. Does the Dublin High Court have international jurisdiction to open the requested insolvency proceeding? (Explain why it does or does not have jurisdiction.) Your answer should contain references to the applicable law and the relevant CJEU jurisprudence.

Article 3(1) of EIR 2000 established that “*the courts of the Member State within the territory of which the centre of a debtor’s main interests is situated shall have jurisdiction to open insolvency proceedings*”.

In addition, Article 3(1) also provides that “*the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary*.”. On the basis, as Cardinal Home is an Ireland-registered company – the centre of main interests of the debtor is Ireland as such, the law of Ireland, being the state of the opening of insolvency proceedings, the *lex concursus*, determines the effects of such proceedings.

The definition of COMI in the EIR Recast is supported by the CJEU case law in *Eurofood IFSC Ltd*.

The law of the Member State will define the competent court that can open the proceedings. The legislation governing the law of corporate insolvency in Ireland is the Companies Act – the Irish High Court has the jurisdiction to open insolvency proceedings. As such the Dublin High Court does not have international jurisdiction to open the requested insolvency proceedings – the proceedings would need to be opened instead by the Irish High Court. **The Dublin High Court is the Irish High Court.**

Question 4.2 [maximum 5 marks] 5

Assume that the Dublin High Court opens the respective proceeding on 30 June 2017. Will the EIR Recast be applicable? Your answer should address the EIR Recast’s scope and contain **all** steps taken to answer the question.

To determine if the examinership proceedings opened by the Dublin High Court fall under the scope of the EIR Recast, we will need to consider the temporal scope, personal scope, material scope and territorial scope with respect to the proceedings:

- Temporal scope - when were the proceedings opened. If opened after 26 June 2017, when the EIR Recast came into effect then the EIR Recast would be applicable (where other conditions are met).

The petition to open proceedings was filed on 22 June 2017, however this date is not the date we need to consider when determining if the EIR Recast applies. Under Article 2(8) of the EIR Recast the time the proceedings are opened means “*the time at which the judgment opening insolvency proceedings becomes effective, regardless of whether the judgment is final or not*”.

The examinership proceedings were opened on 30 June 2017, after the EIR Recast came into effect.

- Personal scope – is the entity an ‘excluded undertaking’ under Article 1 (2) of the EIR Recast.

- Cardinal Home is not an 'excluded undertaking' listed in Article 1 (2) of the EIR Recast.
- Material scope – are the proceedings covered in Annex A to the EIR Recast.

Examinership proceedings are listed in Annex A to the EIR Recast under ÉIRE/IRELAND.

- Territorial scope – is the debtor's centre of main interests located in an EU Member State, excluding Denmark.

Under Article 3(1) of the EIR Recast, the debtor's centre of main interests ("COMI") is "*the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties.*". Cardinal Home is an Irish Registered company and its first store was in Ireland – Article 3 (1) also provides that in the absence of proof to the contrary, "in the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests" It is not explicit, however, in the information provided, if the registered office or the administration of the business is conducted from Ireland, on the assumption that it is, the COMI would be Ireland, which is an EU Member State.

Based on the information provided and on the assumption that the COMI is Ireland, the EIR Recast should be applicable to the examinership proceedings.

Question 4.3 [maximum 5 marks] 3

An Italian bank files a petition to open secondary insolvency proceedings in Italy with the purpose of securing an Italian insolvency distribution ranking. Given the facts of the case, can such proceedings be opened in Italy under the EIR Recast? Your answer should contain references to the applicable law and the relevant CJEU jurisprudence.

Article 3(2) of the EIR Recast allows for secondary proceedings to be opened in another EU Member State where the debtor "*possesses an establishment within the territory of that other Member State*". Such proceedings under will be restricted to the assets of the debtor located in the EU Member State.

Article 2(10) of the EIR Recast defines establishment as "*any place of operations where a debtor carries out or has carried out in the 3-month period prior to the request to open main insolvency proceedings a non-transitory economic activity with human means and assets.*".

Cardinal Home has a warehouse in Milan, Italy - it will need to be considered what the activities are at the warehouse to consider if the warehouse is non-transitory economic activity for the purposes of an establishment. In the case of *Interdil* the CJEU concluded that the presence of human resources is connected to the pursuit of economic activity. The warehouse in Italy would need to employ persons on a permanent basis and not just for the purposes of storing goods.

While your reasoning is sound, the answer is incomplete. The facts of the case do not support the finding of an establishment of Cardinal Home in Italy. The presence of assets (leased-out warehouse) in isolation, contractual relations with a local bank (including maintenance of a bank account) and *occasional* negotiations with local distributors do not qualify as 'non-transitory economic activity with human means and assets.' The requisite minimum level of organisation and a degree of stability (see para. 64 in *Interdil*) is missing.

Total marks: 12 out of 15.

*** End of Assessment ***

Total marks: 42.5 out of 50.